

1 Fred W. Schwinn (SBN 225575)
2 CONSUMER LAW CENTER, INC.
3 12 South First Street, Suite 416
4 San Jose, California 95113-2404
5 Telephone Number: (408) 294-6100
6 Facsimile Number: (408) 294-6190
7 Email Address: fred.schwinn@sjconsumerlaw.com

8 Attorney for Plaintiff
9 MARY GARCIA HERNANDEZ

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MARY GARCIA HERNANDEZ,

Plaintiff,

v.

UNIVERSAL FIDELITY, L.P., a Texas
limited partnership, TWS INTERESTS, LLC,
a Texas limited liability company, TERRY
W. SIMONDS, individually and in his
official capacity, YVONNE D. SIMONDS,
individually and in her official capacity, and
JOHN LEE JACKSON, individually and in
his official capacity,

Defendants.

Case No. 03189JW

COMPLAINT

DEMAND FOR JURY TRIAL

15 Unites States Code § 1692 *et seq.*
California Civil Code § 1788 *et seq.*

Plaintiff, MARY GARCIA HERNANDEZ, based on information and belief and investigation of counsel, except for those allegations which pertain to the named Plaintiff or her attorneys (which are alleged on personal knowledge), hereby makes the following allegations:

I. INTRODUCTION

1. This is an action for statutory damages, attorney fees and costs brought by an individual consumer for Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code § 1788 *et seq.* (hereinafter "RFDCPA") which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

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1 **II. JURISDICTION**

2 2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. §
3 1337, and supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. § 1367.
4 Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

5 3. This action arises out of Defendants' violations of the Fair Debt Collection
6 Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

7 **III. VENUE**

8 4. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b), in
9 that a substantial part of the events or omissions giving rise to the claim occurred in this judicial
10 district. Venue is also proper in this judicial district pursuant to 15 U.S.C. § 1692k(d), in that the
11 Defendants transact business in this judicial district and the violations of the FDCPA complained
12 of occurred in this judicial district.

13 **IV. INTRADISTRICT ASSIGNMENT**

14 5. This lawsuit should be assigned to the San Jose Division of this Court because
15 a substantial part of the events or omissions which gave rise to this lawsuit occurred in Santa Clara
16 County.

17 **V. PARTIES**

18 6. Plaintiff, MARY GARCIA HERNANDEZ (hereinafter "Plaintiff"), is a
19 natural person residing in Santa Clara County, California. Plaintiff is a "consumer" within the
20 meaning of 15 U.S.C. § 1692a(3) and a "debtor" within the meaning of Cal. Civil Code § 1788.2(h).

21 7. Defendant, UNIVERSAL FIDELITY, L.P. (hereinafter "UNIVERSAL"), is
22 a Texas limited partnership engaged in the business of collecting debts in this state with its principal
23 place of business located at: 1445 Langham Creek Drive, Houston, Harris County, Texas 77084-
24 5012. UNIVERSAL may be served as follows: Universal Fidelity, L.P., c/o Terry W. Simonds,
25 Registered Agent, 1445 Langham Creek Drive, Houston, Harris County, Texas 77084-5012. The
26 principal business of UNIVERSAL is the collection of debts using the mails and telephone, and
27 UNIVERSAL regularly attempts to collect debts alleged to be due another. UNIVERSAL is a "debt
28 collector" within the meaning of 15 U.S.C. § 1692a(6) and Cal. Civil Code § 1788.2(c).

1 8. Defendant, TWS INTERESTS, LLC (hereinafter "TWS"), is a Texas limited
2 liability company and the general partner of UNIVERSAL with its principal place of business
3 located at: 1445 Langham Creek Drive, Houston, Harris County, Texas 77084-5012. TWS may
4 be served as follows: TWS Interests, LLC, c/o Terry W. Simonds, Registered Agent, 1445 Langham
5 Creek Drive, Houston, Harris County, Texas 77084-5012. The principal business of TWS is the
6 collection of debts using the mails and telephone, and TWS regularly attempts to collect debts
7 alleged to be due another. TWS is a "debt collector" within the meaning of 15 U.S.C. § 1692a(6)
8 and Cal. Civil Code § 1788.2(c).

9 9. Defendant, TERRY W. SIMONDS (hereinafter "TERRY SIMONDS"), is a
10 natural person and is or was an employee, agent, officer and/or director of UNIVERSAL and TWS
11 at all relevant times. TERRY SIMONDS may be served at his current business address at: Terry
12 W. Simonds, Universal Fidelity, L.P., 1445 Langham Creek Drive, Houston, Harris County, Texas
13 77084-5012. TERRY SIMONDS is a "debt collector" within the meaning of 15 U.S.C. § 1692a(6)
14 and Cal. Civil Code § 1788.2(c). Plaintiff is informed and believes, and thereon alleges that TERRY
15 SIMONDS is liable for the acts of UNIVERSAL and TWS because he sets and approves
16 UNIVERSAL and TWS collection policies, practices, procedures and he directed the unlawful
17 activities described herein.

18 10. Defendant, YVONNE D. SIMONDS (hereinafter "YVONNE SIMONDS"),
19 is a natural person and is or was an employee, agent, officer and/or director of UNIVERSAL and
20 TWS at all relevant times. YVONNE SIMONDS may be served at her current business address at:
21 Yvonne D. Simonds, Universal Fidelity, L.P., 1445 Langham Creek Drive, Houston, Harris County,
22 Texas 77084-5012. YVONNE SIMONDS is a "debt collector" within the meaning of 15 U.S.C.
23 § 1692a(6) and Cal. Civil Code § 1788.2(c). Plaintiff is informed and believes, and thereon alleges
24 that YVONNE SIMONDS is liable for the acts of UNIVERSAL and TWS because she sets and
25 approves UNIVERSAL and TWS collection policies, practices, procedures and she directed the
26 unlawful activities described herein.

27 11. Defendant, JOHN LEE JACKSON (hereinafter "JACKSON"), is a natural
28 person and is or was an employee, agent, officer and/or director of UNIVERSAL and TWS at all

relevant times. JACKSON may be served at his current business address at: John Lee Jackson, Universal Fidelity, L.P., 1445 Langham Creek Drive, Houston, Harris County, Texas 77084-5012. JACKSON is a “debt collector” within the meaning of 15 U.S.C. § 1692a(6) and Cal. Civil Code § 1788.2(c). Plaintiff is informed and believes, and thereon alleges that JACKSON is liable for the acts of UNIVERSAL and TWS because he sets and approves UNIVERSAL and TWS collection policies, practices, procedures and he directed the unlawful activities described herein.

12. At all times herein mentioned, each of the Defendants was an officer, director, agent, servant, employee and/or joint venturer of his co-defendants, and each of them, and at all said times, each Defendant was acting in the full course and scope of said office, directorship, agency, service, employment and/or joint venture. Any reference hereafter to “Defendants” without further qualification is meant by Plaintiff to refer to each Defendant, and all of them, named above.

VI. FACTUAL ALLEGATIONS

13. On a date or dates unknown to Plaintiff, Plaintiff is alleged to have incurred a financial obligation that was primarily for personal, family or household purposes, namely a consumer credit card issued by JC Penny and bearing the account number XXXXXXXXXXXX2800 (hereinafter “the alleged debt”). The financial obligation alleged to be owed to JC Penny by Plaintiff is a “debt” as that term is defined by 15 U.S.C. § 1692a(5) and a “consumer debt” as that term is defined by Cal. Civil Code § 1788.2(f).

14. Sometime thereafter, on a date unknown to Plaintiff, the alleged debt was consigned, placed or otherwise transferred to Defendants for collection from Plaintiff.

15. Thereafter, Defendants sent a collection letter (Exhibit “1”) to Plaintiff which is a “communication” in an attempt to collect a debt as that term is defined by 15 U.S.C. § 1692a(2).

16. A true and accurate copy of the first collection letter from Defendants to Plaintiff is attached hereto, marked Exhibit “1,” and by this reference is incorporated herein.

17. The first collection letter (Exhibit “1”) is dated March 29, 2007.

18. The first collection letter (Exhibit “1”) was sent in an envelope on which a postage meter stamp dated March 29, 2007, was imprinted.

19. Plaintiff is informed and believes, and thereon alleges that Defendants

1 deposited the envelope containing the first collection letter (Exhibit "1") in the United States Mail
2 on or about March 29, 2007.

3 20. Plaintiff received the envelope containing the first collection letter (Exhibit
4 "1") from Defendants on or after March 30, 2007.

5 21. The collection letter (Exhibit "1") was Defendants' first written notice
6 initially addressed to Plaintiff in connection with collecting the debt alleged to be owed to JC Penny.

7 22. On or about April 12, 2007, Plaintiff mailed a letter to Defendants which
8 stated: "please be advised that I dispute this debt and refuse to pay."

9 23. A true and accurate copy of Plaintiff's letter disputing the alleged debt and
10 refusing to pay the alleged debt is attached hereto, marked Exhibit "2," and by this reference is
11 incorporated herein.

12 24. Defendants received Plaintiff's letter disputing the alleged debt and refusing
13 to pay the alleged debt (Exhibit "2") on or about April 14, 2007.

14 25. A true and accurate copy of the USPS Tracking Report and Certified Mail
15 Return Receipt evidencing Defendants' receipt of Plaintiff's letter disputing the alleged debt and
16 refusing to pay the alleged debt (Exhibit "2") is attached hereto, marked Exhibit "3," and by this
17 reference is incorporated herein.

18 26. After receiving Plaintiff's letter disputing the alleged debt (Exhibit "2"),
19 Defendants continued their collection efforts without first obtaining and mailing Plaintiff a
20 validation of the debt being collected.

21 27. After receiving Plaintiff's letter notifying Defendants of her refusal to pay the
22 alleged debt (Exhibit "2"), Defendants continued to communicate with Plaintiff in an attempt to
23 collect the alleged debt.

24 28. Thereafter, Defendants sent a second collection letter (Exhibit "4") to Plaintiff
25 which is a "communication" in an attempt to collect a debt as that term is defined by 15 U.S.C. §
26 1692a(2).

27 29. A true and accurate copy of the second collection letter from Defendants to
28 Plaintiff is attached hereto, marked Exhibit "4," and by this reference is incorporated herein.

1 43. The financial obligation allegedly owed to JC Penny by Plaintiff is a “debt”
2 as that term is defined by the FDCPA, 15 U.S.C. § 1692a(5).

3 44. Defendants have violated the FDCPA in the following respects:

4 a. Defendants continued to communicate with Plaintiff in an attempt to
5 collect the alleged debt after receiving a written notification that
6 Plaintiff refused to pay the debt being collected, in violation of 15
7 U.S.C. § 1692c(c); and

8 b. Defendants continued their collection efforts against Plaintiff after
9 receiving a written notification within the thirty-day validation period
10 from Plaintiff disputing the debt being collected in its entirety
11 without first obtaining a verification of the debt and mailing a copy
12 of such verification to Plaintiff, in violation of 15 U.S.C. § 1692g(b).

13 45. Defendants’ acts as described above were done intentionally with the purpose
14 of coercing Plaintiff to pay the alleged debt.

15 46. As a result of Defendants’ violations of the FDCPA, Plaintiff is entitled to an
16 award of statutory damages, costs and reasonable attorneys fees, pursuant to 15 U.S.C. § 1692k.

17 **ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

18 47. Plaintiff brings the second claim for relief against Defendants under the
19 Rosenthal Fair Debt Collection Practices Act (“RFDCPA”), California Civil Code §§ 1788-1788.33.

20 48. Plaintiff repeats, realleges and incorporates by reference paragraphs 1 through
21 46 above.

22 49. Plaintiff is a “debtor” as that term is defined by the RFDCPA, Cal. Civil Code
23 § 1788.2(h).

24 50. Defendant, UNIVERSAL, is a “debt collector” as that term is defined by the
25 RFDCPA, Cal. Civil Code § 1788.2(c).

26 51. Defendant, TWS, is a “debt collector” as that term is defined by the RFDCPA,
27 Cal. Civil Code § 1788.2(c).

28 52. Defendant, TERRY SIMONDS, is a “debt collector” as that term is defined

1 by the RFDCPA, Cal. Civil Code § 1788.2(c).

2 53. Defendant, YVONNE SIMONDS, is a “debt collector” as that term is defined
3 by the RFDCPA, Cal. Civil Code § 1788.2(c).

4 54. Defendant, JACKSON, is a “debt collector” as that term is defined by the
5 RFDCPA, Cal. Civil Code § 1788.2(c).

6 55. The financial obligation alleged to be owed to JC Penney by Plaintiff is a
7 “consumer debt” as that term is defined by the RFDCPA, Cal. Civil Code § 1788.2(f).

8 56. Defendants have violated the RFDCPA in the following respects:

- 9 a. Defendants continued to communicate with Plaintiff in an attempt to
10 collect the alleged debt after receiving a written notification that
11 Plaintiff refused to pay the debt being collected, in violation of 15
12 U.S.C. § 1692c(c), as incorporated by Cal. Civil Code § 1788.17; and
13 b. Defendants continued their collection efforts against Plaintiff after
14 receiving a written notification within the thirty-day validation period
15 from Plaintiff disputing the debt being collected in its entirety
16 without first obtaining a verification of the debt and mailing a copy
17 of such verification to Plaintiff, in violation of 15 U.S.C. § 1692g(b),
18 as incorporated by Cal. Civil Code § 1788.17.

19 57. Defendants’ acts as described above were done willfully and knowingly with
20 the purpose of coercing Plaintiff to pay the alleged debt, within the meaning of Cal. Civil Code §
21 1788.30(b).

22 58. As a result of Defendants’ willful and knowing violations of the RFDCPA,
23 Plaintiff is entitled to an award of a statutory penalty in an amount not less than one hundred dollars
24 (\$100) nor greater than one thousand dollars (\$1,000), pursuant to Cal. Civil Code § 1788.30(b).

25 59. As a result of Defendants’ violations of the RFDCPA, Plaintiff is entitled to
26 an award of statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(A), as incorporated by Cal. Civil
27 Code § 1788.17.

28 60. As a result of Defendants’ violations of the RFDCPA, Plaintiff is entitled to

an award of her reasonable attorney's fees and costs pursuant to Cal. Civil Code § 1788.30(c) and 15 U.S.C. § 1692k(a)(3), as incorporated by Cal. Civil Code § 1788.17.

61. Pursuant to Cal. Civil Code § 1788.32, the remedies provided under the RFDCPA are intended to be cumulative and in addition to any other procedures, rights or remedies that the Plaintiff may have under any other provision of law.

VIII. REQUEST FOR RELIEF

The Plaintiff requests that this Court:

- a. Assume jurisdiction in this proceeding;
- b. Declare that Defendants violated the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692c(c) and 1692g(b);
- c. Declare that Defendants violated the Rosenthal Fair Debt Collection Practices Act, Cal. Civil Code § 1788.17;
- d. Award Plaintiff statutory damages in an amount not exceeding \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- e. Award Plaintiff a statutory penalty in an amount not less than \$100 nor greater than \$1,000 pursuant to Cal. Civil Code § 1788.30(b);
- f. Award Plaintiff statutory damages in an amount not exceeding \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A), as incorporated by Cal. Civil Code § 1788.17;
- g. Award Plaintiff the costs of this action and reasonable attorneys fees pursuant to 15 U.S.C. § 1692k(a)(3) and Cal. Civil Code §§ 1788.17 and 1788.30(c); and
- h. Award Plaintiff such other and further relief as may be just and proper.

CONSUMER LAW CENTER, INC.

By: /s/ Fred W. Schwinn
 Fred W. Schwinn, Esq.
 Attorney for Plaintiff
 MARY GARCIA HERNANDEZ

CERTIFICATION PURSUANT TO CIVIL L.R. 3-16

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

/s/ Fred W. Schwinn
Fred W. Schwinn, Esq.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, MARY GARCIA HERNANDEZ, hereby demands a trial by jury of all triable issues of fact in the above-captioned case.

/s/ Fred W. Schwinn
Fred W. Schwinn, Esq.